SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

LC2005-000097-001 DT

04/14/2005

CLERK OF THE COURT HONORABLE MICHAEL D. JONES P. M. Espinoza Deputy FILED:

CRYSTAL SPRINGS APT MATTHEW D KOGLMEIER

v.

SHAUN H THWAITS SHAUN H THWAITS (001)

11875 W MCDOWELL RD #1125

AVONDALE AZ 85323

REMAND DESK-LCA-CCC TOLLESON JUSTICE COURT

RECORD APPEAL RULE / REMAND

TOLLESON JUSTICE COURT

Cit. No. #CV04-05513FD

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and I have considered and reviewed the record of the proceedings from the trial court, exhibits made of record and the memoranda submitted.

Facts

On July 5, 2003, Appellee, Shaun H. Thwaits, entered into a lease agreement with Appellant, Crystal Springs Apartments. Pursuant to the agreement, Appellee was to receive \$278.00 per month in move-in rent incentives. According to the record, Appellee received \$4,459.00 in rent concessions during his tenancy. On November 23, 2004, Appellee was served with an immediate termination notice for violating the terms of the lease agreement (disturbing Docket Code 512 Form L512 Page 1

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the peace and criminal damage). On December 2, 2004, Appellee was served with a forcible detainer summons and complaint. At the hearing, Appellee entered a guilty plea. Consequently, the trial court granted Appellant a judgment for a writ of restitution, \$920.44 in rents, and additional monies for late charges, court costs, and attorney's fees. However, the trial court denied Appellant's request for \$4,459.00 in rent incentives, which were due Appellant when Appellee breached the lease agreement. Appellant, having filed a timely notice of appeal, now brings the matter before this court.

Issue & Analysis

The only issue is whether the trial court erred when it denied Appellant's request for an award of the move-in incentives in the amount of \$4,459.00, as required by the lease agreement, and as provided under A.R.S. §§33-1368(C) and 1377(F). The lease agreement states in relevant part:

[I]f any incentive, move-in special or concession is given by Manager and received by Tenant, Tenant must immediately repay to Manager any incentive, move-in special or concessions in the amount of \$5000 DIV OVER 18 MO LEASE TAKES \$270 OFF RENT. MAKES RENT \$686.75 INCLUDES W/S/T. Upon any breach by Tenant of any provision of this agreement, whether a forcible detainer is filed, IF TENANT TERMINATES THIS AGREEMENT PRUSUANT [sic] TO PARAGRAPH 20 OF THE LEASE AGREEMENT, or for any other reason[emphasis added].

The terms of the parties' contract indicate clearly that the trial court should have granted Appellant's request for the \$4,459.00 as repayment of move-in incentives.

A.R.S. §§33-1368(C) provides authority for Appellant's recovery of the move-in concessions. A.R.S. §33-1368(C) states:

The landlord may recover all reasonable damages, resulting from noncompliance by the tenant with the rental agreement or § 33-1341 or occupancy of the dwelling unit, court costs, reasonable attorney fees and all quantifiable damage caused by the tenant to the premises[emphasis added].

After a careful examination of the record and Arizona law, I find Appellant's position persuasive, and must reverse the decision of the trial court, and remand with instructions to enter a new judgment that will include damages for rent or 'move-in' concessions.

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IT IS THEREFORE ORDERED reversing the decision of the Tolleson Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Tolleson Justice Court for all further and future proceedings.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT